

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

OJORE MULUMBA AJAMU,

Petitioner,

vs.

THE STATE OF NEBRASKA,

Respondent.

8:22CV348

MEMORANDUM AND ORDER

This matter is before the Court on its own motion regarding a Petition for a Writ of Habeas Corpus under [28 U.S.C. § 2254](#) which Petitioner sought to have filed in Case No. 4:21-cv-3080. [Filing No. 1](#). The Court hereby notifies Petitioner that it has opened a new § 2254 habeas case for his petition because the case cited by Petitioner in his petition was dismissed on July 21, 2021, and is closed. See Case No. 4:21-cv-3080, [Filing No. 13](#).

If Petitioner does not wish to proceed with his petition in this new habeas case, Petitioner may move to voluntarily withdraw his habeas corpus petition within 30 days. See [Castro v. United States](#), 540 U.S. 375, 382–83 (2003) (requiring notice, warning, and opportunity to amend or withdraw before recharacterization of pro se litigant's motion as initial § 2255 motion; when these requirements unsatisfied, recharacterized motion not considered § 2255 motion rendering later motion successive); see also [Martin v. Overton](#), 391 F.3d 710, 713 (6th Cir. 2004) (applying *Castro* to § 2254 petition). Should Petitioner decide to allow this action to proceed as one brought pursuant to Section 2254, he should be aware of his obligation to raise all his habeas corpus claims in this action. This is because there is a statutory prohibition against

successive petitions by state prisoners codified in [28 U.S.C. § 2244](#). To that end, the Court will give Petitioner leave to amend his petition if he so chooses.

IT IS THEREFORE ORDERED that:

1. Petitioner shall no later than **November 18, 2022**, voluntarily withdraw his petition if he does not want this action to proceed as one brought pursuant to [28 U.S.C. § 2254](#).

2. If Petitioner decides to allow this action to proceed as one brought pursuant to [28 U.S.C. § 2254](#), he may file an amended petition if he wishes no later than **November 18, 2022**. Petitioner must set forth all his claims in an amended petition for writ of habeas corpus, even those identified in his original petition. Petitioner is encouraged to use the enclosed official Form AO 241.

3. If Petitioner fails to respond to this order or file an amended petition, the Court will construe Petitioner's pleading as a petition filed pursuant to [28 U.S.C. § 2254](#), and the Court will rule on Petitioner's pending motion for leave to proceed in forma pauperis, [Filing No. 3](#), and will thereafter conduct a preliminary review of the habeas petition in accordance with Rule 4 of the Rules Governing Section 2254 cases.

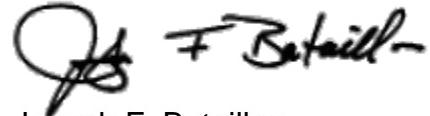
4. The Clerk of the Court is directed to send to Petitioner the Form AO241 ("Petition Under [28 U.S.C. § 2254](#) for a Writ of Habeas Corpus").

5. To avoid confusion, any document Petitioner sends to the Clerk of the Court for filing in this case must clearly display the case number.

6. The Clerk of the Court is directed to set the following pro se case management deadline: **November 18, 2022**: check for motion to withdraw or amended habeas petition.

Dated this 19th day of October, 2022.

BY THE COURT:

A handwritten signature in black ink, appearing to read "JF Bataillon".

Joseph F. Bataillon
Senior United States District Judge